

## Research Article

# COMPARATIVE STUDY OF COMMITMENT TO THE THIRD PARTY WITH INHERITANCE AND PENSION

\* Sakineh Asadzadeh

PhD of Private Law, Teacher in Islamic Azad University of Tehran, Electronic Branch, Iran.

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### ABSTRACT

Recalling to Article 2 (16) of Iran Social Security Law approved in 1975, the pension is a sum that is insured consideration paid of premium and in case of death, it is paid to the survivors for providing their subsistence. This definition is similar in some ways to a commitment to a third party and in other ways to inheritance. However, there are many differences between these legal entities. The obligation to a third party remains a pension because the third party benefits from it, but it differs from the pension mentioned in the Social Security Law in aspects such as the origin of the creation or the subject or legal framework defined for it. On the other hand, the last part of paragraph 16 of the above article is similar to inheritance, including that the survivor will not necessarily be the heir. In the present article, in the first part, the legal nature of the obligation to a third party with the inheritance and pension and in the second part, the difference between these three institutions will be explained.

**Keywords:** Commitment to the third party - Pension - Contractual origin - Legal origin - Legal nature.

### INTRODUCTION

There is no legal definition for commitment to third party and what is discussed as commitment to third-party in doctrines is a legal inference from the last part of Article 196 of Civil Code, which is influenced by French law. This article is stated: « It is possible the person to make the commitment to the third party while making a transaction for himself ». Jurists have interpreted this part of the article as an commitment to the third party. In the case of pension, the legislator has provided a legal definition in Article 2 (16) of the Social Security Law: « A pension is an amount that is insured according to the conditions stipulated in this law in order to compensate all or part of the income, and in case of his death for the livelihood of his survivors will be paid». What caused the similarity between these two legal entities is that both of them are legal obligations and status rulings, and in both cases, a third party enjoys the effects of this obligation, but in the nature, origin, subject, and purpose of establishment, these two obligations are different from each other. They have profound differences. Such as the commitment to the third party that is an obligation originates from the contract and derives legal force and power from the intention of the main parties of the contract and is subject to Article 10 of the Civil Law but the pension is a legal obligation and originates from the law and the rule. It is Jus cogens. On the other hand, the aforementioned titles with the inheritance (Articles 861-949) in Iran Civil Law, have differences and similarities. Therefore, in the first part, the legal nature of the commitment to the third party with the inheritance and pension will be examined and then, the legal nature of inheritance with the two, will be considered in the second part.

#### ❖ Analysis of the legal nature of the commitment to the third party with inheritance and pension

##### The legal nature of the commitment to the third party

Regarding the commitment to the third party no legal definition has

been provided and the above title has been inferred in doctrines by content of the last part of article 196 of Iran civil code. This article also does not mention the nature of commitment to the third party and therefore, there have been many difference opinions among experts regarding its legal nature for a long time. Regarding the nature of the commitment to the third party, four conventional theories: proposal, nosy transaction, exceptional creation of right to the third party and the direct obligation resulting from the contract have been presented. The most appropriate theory has been accepted by most lawyers is the theory of direct obligation resulting from the contract. According to this theory, commitment to the third party gains its strength and power directly from the main contract, and the consent of the third party is only effective regarding its establishment, in other words, the commitment to the third party has a special nature in terms of the basis and origin of the contract, but before third is similar to rhythm. In such a way that the cancellation of the original contract does not affect it and this right can be claimed as it has been established, but as an exception regarding life insurance, in articles 25 and 26 of Iran insurance law (1937), the legislator has given this point to the policyholder to change the beneficiary of life insurance agreement or to transfer the insurance amount to someone else.

### COMMITMENT TO THE THIRD PARTY AND PENSION

#### In terms of conditions the possession

Recalling to the legal definition of pension provided in article 2 (16) of security social law, the pension awards in the case of the main insured (while still alive) in order to compensate all or part of the income may be received by the persons who are under his guardianship and tutelage and or his qualified survivors subject to the death of the main insured and in order to ensure the livelihood of those who were dependent on him, while the commitment to the third party is standing up to the third party and his guardian based on the agreement between the main parties. So the obligee is only responsible for fulfilling the obligation in front of him and in case of his death, he will not be obliged to fulfill the obligation in front of his heirs

\*Corresponding Author: Sakineh Asadzadeh,

PhD of Private Law, Teacher in Islamic Azad University of Tehran, Electronic Branch, Iran.

unless the main parties of the contract, have stipulated contrary of this with each other. The death pension is awarded to the survivors under the main insured to provide for their livelihood, but the third party beneficiary may be fully capable, and this capability will not in any way prevent him from enjoying the right created for his benefit. In fact, if Sponsorship is carried in its special meaning (i.e. the relationship of dependence of the survivor on the main insured in terms of finances and livelihood), only a person can claim death pension who is economically and after death, also continues this dependence. The practical result of the discussion is where the previous Sponsorship was certain, in this case, the current Sponsorship of the survivor can be ascertained by referring to the principle of observing status quo ante .

### In terms of legal and contractual

Commitment to the third party is a legal obligation and in relation to a third party, a right has been created, and this created right owes its strength and power to the contract and the intention of the main parties of the contract. Therefore, even though this right does not disappear in the case of forced or voluntary dissolution of the main contract but by announcing the rejection or withdrawn of the third party, it doesn't become established in his right and if he accepts this right and then withdraws it or dies after accepting, however this right isn't transferred to the obligor. Regarding the pension, it should be said that its existence is completely dependent on the law and the insuring the person, resulting from the legal validity and the mandate of the legislator, and not the contract between the employee and employer. Therefore, termination of the insurance relationship for legal reasons deprive the dependent insured (survivor) of this right, and the will of the legislator will be involved in this matter.

### In terms of topic

Recalling to article 196 of civil law and the use of the word " obligation ", it seems according to the application of the word " obligation " and use of its broad meaning, recalling to article 224 of civil code " The words of the contracts are predicted on customary meanings ", the subject of the commitment to the third party can be an act or omission of an act (obligation) or in kind or cash but in the case of pension, the subject is necessarily cash that will pay monthly or in lump sum to the insured survivor of deceased and this is insured survivor of the deceased, and this is urged from definition of the article 2 (16) of civil security about the subjective nature of pension. Regarding pension, it should be said that the beneficiary must necessarily have a relative or causal relationship with the main insured, but regarding the commitment to the third party, it should be said that the beneficiary may not have a causal or relative relationship and may not even be under the responsibility of the person, and he is responsible for the emotional relations that he has with the third party wants to create a gratuitous or compensatory right for him in the main contract, but the establishment of insurance relationship and the payment of the relevant insurance premium in each case, and therefore it seems that the establishment of a pension related to subsidiary insured is a gratuitous obligation that cannot be compensated for the main insured; let alone for the subsidiary insured, even assuming the legal possibility of compensatory from the insured and the fund is not conceivable.

## COMMITMENT TO THE THIRD PARTY AND INHERITANCE

As mentioned, on the basis of the acceptance of the fourth theory regarding the commitment to the third party, it should be said that the commitment to the third party is an obligation arising from the contract and the main intention of the parties, and in fact, it is a statutory

provision that the contrary agreement has accepted in some cases, but regarding the legal nature of the inheritance, It should be said that due to the fact the inheritance is a compulsory provision and contrary agreement of that is not accepted, especially the extent of the heirs possession of the estate is amount calculated in the law, and the possibility of change or conversion or the condition to the contrary is not accepted and so is invalid. In addition, the inheritance is derived from the jurisprudence, which interferes with public order and bonos mores. It is true in the case of establishment the right to the third party, the obligee or obligor cannot change the subject of obligation without consent of the third party, but this is limited unlike inheritance, which has a general prohibition. In addition, the shares of the heirs have been specifically counted in the law and the personal benefiting of the excess of the shares of and the personal benefiting of the excess of heirs is acceptable if it were not excess of third and its desired format will be a will or gift or other similar formats but there is no such limitation about the commitment to the third party. Of course, it is true recalling to article 959 of civil code, the obligee cannot deprive his rights generally, but this restriction will be effective in relation to the judgment provision, not to judgment affects.

### Analysis the inheritance and pension

The persons who receive pension indirectly are counted in the social security law and the Degree in the succession are not valid for them. In other words, only the children, father, mother, and spouse have the right to request the above pension, and other persons, including uncles, aunts or grandfathers are deprived of it. It should be said that the estate or the property left by the deceased is the property that comes out of his ownership due to his death and goes to his heirs. It will be distributed among the heirs according to the inheritance law but this pension is considered as part of the right of the heirs and in order to help the dependents of the employee to live after his death. In fact, there was no pension right during the deceased's life to divide basis on the rules among the heirs. Therefore, the pension will pay equally to the survivors according to the rule of inheritance and maybe some of survivors do not have right to receive the pension but inherit from the deceased's property. Payment the deceased's debt form pension is not legal and is not possible but in the case of life insurance, it should be said this capital is not considered as a part of estate. If the insurer has specified specific conditions how about to divide it in the insurance contract, according to the case, the capital will be divide among the heirs. If the shares of the heirs are not specified in the insurance contract, this capital will be divided among the heirs based on the rule of inheritance. From legally point of view, article 96 of the law on the execution of civil judgments is specified the case. According to this article: " From the salaries and benefits of the employees in the governmental organizations and institutions or affiliated to the government and the governmental companies, municipalities, banks, companies, private enterprises and like them, if they have a wife or children will be withheld the quarter and otherwise the third.

- It is permissible to withhold and deduct a quarter of the pension or duty of the persons subject to this article, provided the debt is related to a retired person or a person receiving a duty right " .Legal department of the Judiciary also stated in advisory opinion (n° 510/7 dated 30/03/1997): " Due to the article 96 (a) of the law on the execution of civil judgments duty right can be withheld and deducted when the debt related to a person was receiving the duty pension ; Secondly recalling to article 225 of the non-litigious jurisdiction act can be paid for the debts of the deceased, which was considered part of estate. While duty right isn't considered part of inheritance. Therefore withholding the rights of heirs for debts of their bequeather has no legal basis " .

In any case, the fact is that recalling to the last article and the advisory opinion following that and also article 65 of the law on the execution of civil judgments, can be withheld for the debt of the pensioner and it strongly destabilizes the opinion about the legal assumption based on the inclusion of the pension as an execution to debt. However, the broad interpretation of the mentioned article 524 and especially its clause, can prevent the withholding the pension of the survivors in the last assumption. The practical result of accepting each of the two opinions is clear. If the survivor's pension based on a legal assumption (or at least based on a presumption) is considered one of exceptions of debt which is actually a means of livelihood of insured survivors, then it is the creditor who must prove that the survivor has other property or income is not entitled to the pension. But if so, then the pensioner is who must prove that he has no other property or income and according the last advisory opinion, the acceptance of his claim will face serious doubts.

## The difference between the commitment to the third party with inheritance and pension

### 1. Theoretical difference

What is theoretically important regarding the recognition of the legal nature of these institutions, is summarized in the legal effects that these institutions will have on the rights of individuals. If we consider the pension is similar to the commitment to the third party or inheritance, we can adhere to the rules of similar institution in cases of silence or defects or omissions in the governing law on it and obtain the verdict of the specific issue; but if we consider each of them is an independent, different and separate institution from other institutions and we must act within the limits of its legal texts and the extension of the rules of other institutions to each one is the only exception that requires the legislator's clarification. Also, if we confuse the commitment to the third party with the pension, the result of this not only will be invalidating various articles approved in the law surrounding the pension, but will not be fully protect the rights of individuals. The pension is a mixed right with the obligation and the commitment to the third party is a pure and simple right which it is possible to change the third party before establishment the right. In the case of pension, regarding its directly relation to the life and rights of the individuals, there is no way to change or other agreement contrary of that.

### 2. Practical difference

The practical difference of the clearing legal nature of these three items is reflected in the origin of their establishment. If we consider the origin of the right to be contractual, we must examine the created right within the limits of the contractual conditions and necessarily enter the scope of the parties' intentions and analyze the contractual obligation based on the parties' intentions. But if we consider its origin to be legal, the interpretation of its conditions and effects will also take place within the legal limits, and this will have its legal effects and consequences. The separation of these three institutions leaves an important practical difference, such as the fact that in the case of inheritance, the heir is considered the representative of the bequeather and can file a lawsuit on his behalf, provided that at the time of death, he was not opposed to the inheritance and accepted the inheritance. This is similar to the commitment to the third party which requires the acceptance of the beneficiary in its establishment, but it is different compared to the pension which does not require the acceptance of the pension by the survivors; or if according to article 6 of civil liability law which is stated : " If at the time of the injury, the injured party is legally obligated or may later be obligated to support a third party, and as a result of his death, the third party is deprived of

that right, the person causing the loss must pay an amount as a proportionate pension until the Injured life is usually possible and obliged to support a third party and pay to that person, in this case it is up to the court to determine the amount of provision that should be taken". It is intended to compensate the damage caused to the third party, while pension in the social security law It is established to support the survivor; On the other hand, if the share of the wife's inheritance is enough to provide for her livelihood, she will not be entitled to receive this compensation, it is similar to the pension prescribed in the social security law. In the end, it is also necessary to mention that according to the Uniform Practice decision n° 617 issued in 24/06/1997 : "the natural child will have all the rights of the legitimate child except inheritance. It is clear that he can use the pension or obligation created for his benefit if he has the subjected conditions.

## CONCLUSIONS

We knew the commitment to the third party is an independent legal entity that can be interpreted by inferring to the laws and by referring to the general rules and valid legal principles in case of omissions or defects of the rules. Even though it is considered an exception to the principle of relativity of contracts but it is a right arising from the contract, so it is directly affected by the contractual laws and can be interpreted broadly; On the other hand, pension and inheritance also have an independent nature, which due to the fact that they are governed by mandatory rules, so they must be interpreted within the limits of the law and accepting contrary of these rules will not be possible but the legal interpretation of their nature and the identification of legal deficiencies certainly will be effective to approve the complementary laws of those and to remove their ambiguity and brevity.

## REFERENCES

1. Sai, Mohammad Hadi .(1995). The legal nature of the obligation in favor of a third party, Imam Sadiq University (AS), master's thesis
2. Fayaz Bakhsh, Nafiseh .(2013). Strategic thoughts, women and family (comparison of women's protective coverage in the field of duty And pension rights), first edition, published by Payam Adalat, pp.263-284.
3. Ghasemi, Mohsen .(2006). Survivor's pension, Internal quarterly of social security rules and regulations, social security organisation
4. Naimi, Emran et others.(2010). Social security law in the current legal order, Jangal Publications : Tehran.
5. Pension rights resulting from death of employee and how to divide it among the heirs. (2010). Chancellor training of Judiciary, Khorasan Newspaper, South Khorasan, issued in (27/05/2010), publication n° 17633, see : <http://khorasannews.com/?nid=17633&pid=1&type=0>
6. Parto, Hamidreza.(2008). The legal nature of survivor's pension in the Social Security Law, Mazandaran Bar Association Magazine, n° 11.
7. The opinion n° 510/7 of the Legal Department of the Judiciary, issued in (30/03/1997)
8. Uniform Practice decision n° 617 dated 24/06/1997 of General Board of the Supreme Court
9. The decision n° 139 dated 27/06/2014 of General Board of the Administrative Court of Justice